

PRIVATE ROAD CROSSING PERMIT

THIS AGREEMENT, made and entered into this, the 26th day of January, 1988, by and between The Wisconsin River Rail Transit Commission, hereinafter referred to as the "Permitter," and Frazier Bros., hereinafter called the "Permittee."

WITNESSETH:

That for and in consideration of the following undertakings, the parties hereto agree:

1. That for purposes of this permit the Permitter may in the future designate a railroad operator to serve as an agent of the Permitter.

2. That Permitter for and in consideration of the payments and covenants hereinafter mentioned to be made, kept and performed by the Permittee, hereby agrees that, subject to the terms and conditions herein provided, a road crossing may be constructed and thereafter during the term of this Permit be maintained, at the sole cost and expense of the Permittee and for Permittee's exclusive use and benefit, except as otherwise herein provided, over and across the right-of-way and track upon the following location:

A crossing 16 feet in width, with the centerline across the Permitter's track at 345 feet west of the next nearest private crossing at or near Mile Post 197.4, Town of Muscoda, Grant County, Wisconsin.

3. That Permittee shall, at Permittee's sole cost and expense, install said crossing in conformance with Permitter's specifications.

4. That Permitter or its Agent shall, at Permittee's sole cost and expense, maintain, repair, and renew said crossing. This may include the cost of rebuilding the crossing if and when the line is rehabilitated.

5. That Permittee will, at its sole cost and expense, prepare the grading for the approaches to the crossing and install the necessary drainage therefore and thereafter maintain, repair and renew the approaches and drainage so as to prevent water, mud or debris from entering the track zone area. All material used and all work performed hereunder will be of a quality that shall meet the approval of the permitter or Agent.

6. That Permittee will, at its sole cost and expense, perform grading in the area as necessary to provide adequate crossing visibility.

7. That Permittee will, at the sole cost and expense of the Permittee, provide and install two (2) "PRIVATE CROSSING" signs and two (2) "STOP" signs, one set of such signs on each side of the crossing in accordance with standards of the Permitter, and with all applicable laws. The Permitter or Agent will at the sole cost and expense of the Permittee, thereafter maintain said signs.

8. That Permittee will, at its sole cost and expense, keep the weeds, brush and other vegetation on each side of the crossing cut and mowed so as to provide adequate crossing visibility.

9. That Permittee shall not and will not permit the crossing to be used for a public crossing. Permittee's use of the crossing shall at all times be subordinate to the rights of the Permitter and such as not to in any way interfere with or impair any authorized use of the right-of-way, tracks, or other facilities of the Permitter or in any way to interfere with, obstruct, or endanger railroad operations.

10. That Permittee shall exercise all privileges hereunder at its own risk, and, irrespective of any negligence of the Permitter or of the Wisconsin Department of Transportation, Permittee shall indemnify and hold harmless the Permitter, Agent, and Wisconsin Department of Transportation and its officers, employees and agents from and against all liability for actions, suits, damages, costs, losses or expenses of any sort whatsoever resulting from, arising out of or in any way connected with the use of, the condition of, or the presence of the crossing. The Permittee shall also indemnify the Permitter, Agent and Wisconsin Department of Transportation, its officers, employees and agents, against all costs, counsel fees and liabilities incurred in or about any such claim or in or about any action or proceeding brought thereon. If any action or proceeding is brought against Permitter, Agent, or the Wisconsin Department of Transportation or its officials, employees or agents by reason of any such claim, action or proceeding, the Permittee shall resist and defend such action or proceeding. Neither the Permitter, the Agent, nor the Wisconsin Department of Transportation or its officials, employees or agents shall be liable if for any reason whatsoever the Permittee's use of the crossing shall be hindered, disturbed or terminated.

11. That this agreement constitutes and is a limited term Permit only, and the Permitter may forthwith terminate the same by written notice for any breach by the Permittee of any covenant herein contained. This right to terminate shall be in addition to any other right at law or in equity arising by reason of such breach. The failure of the Permitter to terminate this agreement for any such breach shall not constitute a waiver of any future breach. The Permitter may also without cause at any time terminate this agreement and revoke the Permit hereby given, upon sixty (60) days' written notice. All notices herein provided for shall be deemed served when deposited in the United States Mail in an envelope addressed to the Permittee at the address noted below Permittee's signature hereto.

12. That upon termination of the Permit herein granted, the Permittee shall promptly, at its sole cost and expense, restore the premises of the Permitter to their former state of usefulness. Upon failure of the Permittee so to do, Permitter or Agent may perform such work and the Permittee shall reimburse Permitter therefore.

13. Permittee does not and shall not have at any time any interest or estate of any kind whatsoever in or across the above-identified right-of-way, track, facilities or premises by virtue of this document or of the occupancy or of the use hereunder. The Permittee acquires no further rights, title or interests therein, and does not attain any right to relocation costs or similar rights at termination of this Permit. The Permittee shall not assign this Permit or any rights granted hereby. Any assignment of this Permit shall constitute a breach of this Permit and it shall be considered terminated and of no force and effect. In the event the Permitter shall allow another railroad company to use its right-of-way, facilities or premises, such other user or users shall have the benefit of the provisions of indemnity and release from liability inuring to the Permitter hereunder, with the same effect as if such other user were parties hereto.

14. That if the Permitter is ordered by competent authority to provide additional crossing protection at the crossing, the cost thereof shall be borne by the Permittee.

15. That this Private Grade Crossing Permit is without effect and void and the Permitter is in violation of its land use agreement with WisDOT until and unless the Wisconsin Department of Transportation has fully concurred with its provisions and has evidenced its concurrence by the duly executed signature of its authorized official having been affixed below.

16. That Permittee, at its sole cost and expense, shall immediately remove all materials and equipment associated with Permittee's operation from within thirty (30) feet of the centerline of the rail line. In addition, Permittee shall remove all said materials and equipment from the entire right-of-way and refrain from using the right-of-way as a drive within ninety (90) days of the issuance of this Permit. Failure to do so will result in the termination of this Permit.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

L. Frank Huntington
Witness

x James C. Froyer
Witness

PERMITTER

By Richard Fuller
Title Chairman

PERMITTEE

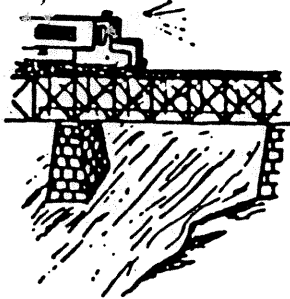
x By Joe Froyer
Froyer Bros. Log & Lumber
Title _____

Address Box 134
Muscoda, Wis. 53573

WisDOT concurs with the above Permit.

By Paul Hartman
Date 1/28/88

Title Dir. Bureau of R.R. & Highways



Wisconsin River Rail Transit Commission

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Phone (608) 342-1214
January 27, 1988

Richard Scullion, Chairman

JAN 28 1988

Mr. Paul Heitmann
Wisconsin Department of Transportation
P.O. Box 7914
Madison, WI 53707

Dear Paul:

Enclosed are three originals of a private crossing permit the Wisconsin River Rail Transit Commission is issuing. Please review and sign the permit, if it meets your approval. Norm DeVries, District #1, joined me in the field inspection.

When finished, keep one original for your records and return the other two to me.

Sincerely,

L. Frank Huntington
Transportation Planner

LFH/bb

Enclosures

that the village violated the FHA by failing to reasonably accommodate Tellurian.

VI.

[12, 13] Tellurian seeks a judgment declaring that the statutory distance restriction in sec. 62.23(7)(1), Stats., violates the FHA. A declaratory judgment action cannot be brought unless a justiciable controversy exists. *Weber v. Town of Lincoln*, 159 Wis.2d 144, 146-47, 463 N.W.2d 869, 869 (Ct.App.1990). A justiciable controversy exists when (1) a claim of right is asserted against one who has an interest in contesting it, (2) the controversy is between persons whose interests are adverse, (3) the party seeking relief has a legally protectible interest in the controversy, and (4) the issue involved is ripe for judicial determination. *Id.* at 147, 463 N.W.2d at 869.

No controversy exists between the parties regarding the distance restriction. The federal court granted Tellurian an exception to the statute. Valid or not, the statute no longer impedes Tellurian's plans to develop its proposed group home. For that reason, we do not decide whether sec. 62.23(7)(1), Stats., violates the FHA.

VII.

Because the village failed to make a reasonable accommodation by refusing to grant the exception to Tellurian, we remand the case for a determination of damages and attorney's fees under 42 U.S.C. § 3613(c).

Judgment affirmed in part; reversed in part and cause remanded with directions.



SIXMILE CREEK ASSOCIATES, INC., a Wisconsin corporation, and, Robert R. Rangette, Petitioners-Plaintiffs-Respondents,¹

v.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation, Respondent-Defendant-Appellant.

No. 93-0127.

Court of Appeals of Wisconsin.

Submitted on Briefs June 4, 1993.

Opinion Released July 1, 1993.

Opinion Filed July 1, 1993.

Property developer brought mandamus action to compel railroad to construct farm crossings for track on proposed golf course. The Circuit Court, Dane County, Michael N. Nowakowski, J., found that proposed crossings were "farm crossings" and ordered their construction by railroad. Appeal was taken. The Court of Appeals, Eich, C.J., held that proposed crossings were not "farm crossings" where golf course was to be public in nature and would require various safety precautions.

Reversed and remanded with directions.

Dykman, J., filed dissenting opinion.

1. Railroads ⇐102(4.5)

"Farm crossings" are crossings required for use of occupants of adjoining lands, as distinguished from highway crossings and railroad crossings, and are not limited to farm or agricultural use. W.S.A. 192.33(1).

See publication Words and Phrases for other judicial constructions and definitions.

2. Railroads ⇐102(6)

"Farm crossing," which is distinguished from highway crossing as result of lesser degree of protection offered to users

and fact that crossing exists only to accommodate occupants of adjoining land, is private in nature and is the lowest form of crossing in that it is not intended to entail any use which would make warning signs or signals or train speed limits necessary in interest of public safety. W.S.A. 192.33(1).

3. Railroads ⇐102(1), 109

Where golf course was to be open to public, railroad crossings within golf course would not be private in nature as necessary for crossings to be designated as "farm crossing" which railroad could be required to construct and maintain; fact that players would be required to check in the club house and pay greens fee did not make golf course "private." W.S.A. 192.33(1).

4. Railroads ⇐102(1), 109

Railroad crossings within proposed public golf course were not private in nature and would require warning signs and various safety precautions, and, thus, crossings were not "farm crossings" which railroad could be required to construct and maintain; farm crossings as defined by statutes entail limited private use for which warnings and safeguards were unnecessary. W.S.A. 192.33(1).

For the respondent-defendant-appellant the cause was submitted on the briefs of Michael D. Stotler and Thomas L. Smallwood of Borgelt, Powell, Peterson & Frauen, S.C., of Milwaukee.

For the petitioners-plaintiffs-respondents the cause was submitted on the brief of Don M. Millis and Kim Grimmer of Ross & Stevens, S.C., of Madison.

Before EICH, C.J., GARTZKE, P.J., and DYKMAN, J.

EICH, Chief Judge.

The Chicago and North Western Transportation Company appeals from a judgment and absolute writ of mandamus ordering it to construct and maintain three at-grade "farm crossings" on its railroad right-of-way and track running through

land on which Sixmile Creek Associates, Inc., plans to construct a golf course.

The issue is whether, given the nature of the property and the intended use of the proposed crossings, they qualify as "farm crossings" within the meaning of sec. 192.33(1), Stats., which requires railroads to "erect and maintain . . . suitable and convenient farm crossings for the use of the occupants of [adjoining] lands. . . ." We hold that they do not and reverse the judgment.

Sixmile was incorporated for the purpose of developing a 428-lot residential subdivision near the Village of Waunakee in Dane County. Included in the project is a 155-acre golf course over which C & NW owns and operates a single-track railroad right-of-way. An average of two eighty to one hundred-car trains operates over the track each day at a maximum speed of thirty miles per hour.

The proposed golf course will be open to the public, with a limited number of private memberships. During the three and one-half month "peak" golf season, approximately 200 persons will be playing the eighteen-hole course daily with approximately 100 persons playing daily during an equally long "non-peak" season. In all, there will be over 85,000 crossings of the C & NW track by golfers each year. In addition to an unknown number of crossings by course maintenance employees.

When C & NW declined Sixmile's request that it construct the three crossings on the course, Sixmile brought this mandamus action under sec. 192.33(1), Stats., to compel it to do so. After taking evidence, the trial court concluded that the proposed crossings were "farm crossings" within the meaning of the statute and ordered the railroad to build them. Specifically, the court ordered C & NW to construct and maintain the portions of the crossings within the railroad right-of-way and required Sixmile to build and maintain the approaches and to pay "[t]he entire cost of installation of the . . . crossings." The court also directed that Sixmile install a variety of warning signs and devices at the crossings and elsewhere along the track

¹ Petition for review filed.

and adopt a series of rules warning golfers of the dangers of the crossings. The railroad appeals.

[1] "Farm crossings" are distinguished from highway crossings both in their use and the extent of required crossing protections. *Manitowoc Clay Prod. Co. v. Manitowoc, G.B. & N.W. Ry. Co.*, 135 Wis. 94, 101, 115 N.W. 390, 393 (1908). They are not limited to farm or agricultural use. Rather, "[t]he words 'farm crossings' are descriptive of the kinds of crossings required for the use of occupants of adjoining lands, as distinguished from highway crossings . . . and railroad crossings." *Id.* Thus, courts have ordered that farm crossings be established under the statute to enable owners whose lands are bisected by the railroad to operate a quarry,¹ a logging enterprise,² or, as in *Manitowoc*, a brickyard.

[2] What primarily distinguishes a farm crossing from a highway crossing is the lesser degree of protection offered to its users, and the fact that the crossing exists "only to accommodate the occupants of [the adjoining land]." *Weiss v. Chicago, N.S. & M.R.R.*, 9 Wis.2d 581, 590, 101 N.W.2d 688, 693 (1960).

A farm crossing is the simplest, or "lowest," form of railroad crossing. It is private in character, access to the same being through or upon private lands, and its purpose is only to accommodate the occupants of such lands. The statutes set out no standards for the establishment and maintenance of a farm crossing except that it be "suitable and convenient" for the use of the adjoining landowner. At such a crossing the railroad is not required to maintain warning signs or give warning whistles or slow the speed of its trains. *In stating that a farm crossing shall be "suitable and convenient" the law does not contemplate any use of the crossing which would make such regulation necessary in the interest of public safety. Id.* (emphasis added).

1. *Buffalo Stone & Cement Co. v. Delaware, L. & W. Ry. Co.*, 130 N.Y. 152, 29 N.E. 121 (1891).

A farm crossing under sec. 192.33(1), Stats., then, has two primary characteristics: it is private in nature and is the "lowest form" of crossing in that it is not intended to entail any use which would make warning signs or signals or train speed limits, or similar safety precautions, "necessary in the interest of public safety."

[3] In this case the golf course will be open to the public and, as we have noted, will involve more than 85,000 crossings by golfers each year. The trial court concluded, nonetheless, that various "restrictions" proposed by Sixmile on the use of the course—guarding against trespassers, and adopting rules providing that all golfers must check in at the clubhouse before playing, where they will receive a written admonition to read and obey all signs located on the course and be required to sign a hold-harmless form—will ensure that the crossings will remain private and "not [be] converted] . . . into . . . public crossing[s]." We disagree. We do not believe such "restrictions" are adequate to render the crossings private in the face of Sixmile's acknowledgment that the course "will be a public golf course," and that "[a]nybody from the public can play . . . [a]s long as they pay the greens fee."

[4] Nor do we consider the proposed crossings to be of such a nature as "not [to] require] . . . warning signs" or similar safety devices. Indeed, the trial court itself felt the need to impose added safety requirements as a condition of its order, directing that Sixmile, among other things, (a) erect and maintain stop signs and cross-buck signs at each crossing, (b) paint stop lines on the pavement adjacent to each side of the track in the area of the crossings, (c) place additional warning signs directing golfers to stop and look both ways before entering the crossing and still more warning signs at 300-foot intervals along both sides of the track, (d) maintain a level grade for thirty feet on each side of each crossing and remove all trees and vegetation along the right-of-way in order to

2. *Caldon v. Chicago, St. P., M. & O. Ry. Co.*, 85 Wis. 527, 55 N.W. 955 (1893).

Cite as 504 N.W.2d 348 (Wis. App. 1993)

maintain a "sight distance" of 400 feet on either side of the crossing, and (e) implement the rules regarding advance golfer check-in, distribution of written warnings and execution of hold-harmless agreements, discussed above.³

As we have said, "farm crossings," as contemplated by sec. 192.33(1), Stats., are those entailing a limited private use for which such warnings and safeguards would be "unnecessary in the interest of public safety." *Weiss*, 9 Wis.2d at 590, 101 N.W.2d at 693. In this case, the trial court went to great lengths to emphasize its concern for considerations of safety at the proposed crossings and conditioned its order requiring their construction upon Sixmile's installation and implementation of a variety of signs, warnings and safety-related operations. If the crossings are of such a nature as to require these additional safeguards, they cannot be considered farm crossings within the meaning of the statute. We therefore reverse the judgment entered on December 17, 1992, and remand to the trial court with directions to grant C & NW's motion to quash the alternative writ and dismiss Sixmile's action.

Judgment reversed and cause remanded with directions.

DIKMAN, Judge (dissenting).

The trial court made a number of findings which supported its decision. These included the statistic that nationwide, accidents involving trains occur, on average, once every thirty-eight years at each railroad crossing. At least three other golf courses in Wisconsin have active railroad lines passing through them. No accident has occurred between a train and a golfer or a train and a golf cart.¹ The trial court

placed great weight on this statistic. It then compared the proposed facility with the existing facilities, and concluded that the visibility on the proposed course would be at least as good as on the other courses. Train speeds on the other courses are higher. Taking all factors of the three existing courses and the proposed course into consideration, the court concluded that, with the precautions Sixmile proposed, the course would be less dangerous than any of the other three courses.

Section 192.33(1), Stats., requires only that a farm crossing be "suitable and convenient." The majority recognizes that the term "farm crossing" may properly have nothing to do with farms. The term refers only to a type of crossing with the least need for protection.

In *Weiss v. Chicago, N.S. & M.R.R.*, 9 Wis.2d 581, 591, 101 N.W.2d 688, 693 (1960), the court recognized the significance of findings of fact made by the trial court. The court said:

Certainly, where there are findings, not only of great expense to the railroad and interference with its operation, but of great hazard and danger to the traveling public, we have circumstances where the use of a farm crossing for the purposes creating the unsafe condition can and should be "denied altogether."

Id.

Expense, interference, hazard and danger are factors the trial court weighs against convenience and suitability of the crossing. The *Weiss* court noted that there are no standards for the establishment and maintenance of a farm crossing except suitability and convenience. *Id.* at 590, 101 N.W.2d at 693. One would search for a long time before finding another statute Sixmile, so it is true that they suggested the precautions. It is also true, however, that the trial court, recognizing the need for safety devices at the crossings, did indeed "require" that they be installed as a condition of approving the crossings.

3. In an attempt to justify its argumentative assertion that we are "penalizing" Sixmile for its good works in supporting safety at the crossings, the dissenting judge criticizes as erroneous our reference to the trial court's "requirement" that warning signs and other safety measures be included in the crossings. The criticism ignores the plain language in the court's judgment that "Petitioners-Plaintiffs shall incorporate and employ all the precautions set forth on Exhibit No. 19 for so long as they use their property as a golf course" The exhibit was prepared by

1. The trial court noted that there had been one minor incident in which a train struck an unintended pull cart at the La Crosse Country Club

which gives as much discretion to the trial court.

The majority does not consider whether the trial court's findings of fact are clearly erroneous, nor whether the trial court improperly exercised its discretion when it balanced the railroad's interests against those of Sixmile. Its analysis is *de novo*. I think that this approach fails to consider the deference we give to trial courts' findings and discretionary rulings.

By analyzing this case as a "public-private" issue, the majority changes the *Weiss* directive that a trial court is to balance convenience against safety. That court said:

Since the public service commission has no jurisdiction over a farm crossing, it must be held to be within the jurisdiction of a court of equity to determine whether or not the use of such a crossing in furtherance of a commercial use of the adjoining land is in the interest of public safety.

Id. at 590, 101 N.W.2d at 692.

The supreme court's analysis in *Weiss* makes common sense. Whether a crossing would be so unsafe that it should be prohibited is the only real question. The public or private nature of the crossing may be a factor in this analysis, but it ought not be dispositive. Were Sixmile to be organized as a private golf course, with memberships sufficient to create 85,000 crossings per year, the danger of pedestrian-train accidents would be the same.

The majority also reasons that if the trial court believed it necessary to require warning signs, the crossings could not be farm crossings. The problem with this reasoning is that the trial court did not "require" the signs. The signs were included in an exhibit Sixmile introduced to show how it intended to build the crossings.

Sixmile contended that it was interested in safety on its golf course. The signs and methods of construction of the crossing were features Sixmile asked the trial court to consider when determining whether to grant Sixmile's petition. The trial court considered and accepted the proposed signs

as it considered field of view, train speed, train frequency and the safety record of other golf course crossings. Had Sixmile omitted the warning signs from its presentation, its chances of success at trial might have diminished, but its chances as a respondent on appeal would have increased considerably. In future cases, applicants would be well advised to omit warning signs from their proposed crossings. I find this anomalous.

The majority is penalizing Sixmile because it took an interest in its patrons' safety and attempted to alleviate the railroad's concerns about the crossings. The majority requires a safety analysis to be made as the land now exists—a farm field—not as it would be used by the golf course. This does not make sense to me, and it is unfair to Sixmile.

The trial court made findings of fact which cover fourteen pages of transcript. These findings cover every aspect of the need for the crossings by Sixmile and the detriment to the railroad of having those crossings. The court considered alternative ways of constructing the course. It did an extensive cost-benefit analysis, with an emphasis on safety. It recognized that absolute safety was impossible to achieve. It considered the cost of tunnels or overhead crossings. It noted the low use of the tracks, the slow speed of the trains, the high visibility of approaching trains, and the excellent safety record at other golf course farm crossings. It found that detriment to the railroad was *de minimis*. The trial court's balancing of the parties' interests and its conclusions of law cover nine more pages of transcript.

Were I writing for the majority, I would conclude that the trial court's findings of fact were not clearly erroneous, and that it did not erroneously exercise its discretion. I would do so because appellate courts traditionally defer to trial courts in these areas. Having accepted the trial court's findings and exercise of discretion, it would be nearly impossible to reject its conclusion that the farm crossings are suitable and

convenient. Thus, were I writing for the majority, I would affirm.



JACOBS v. KARLS
Cite as 504 N.W.2d 353 (Wis.App., 1993)

Wis. 353

1. Appeal and Error — 842(8)
Insurance — 155.1

When only issue is whether insurance policy covers actions of insured, issue becomes question of law, reviewable by Court of Appeals without deference to circuit court.

2. Negligence — 2

When parties' relationship is defined by contract, there must be an independent common-law duty on part of one party in order for injured party to pursue negligence action.

3. Landlord and Tenant — 164(2)

Landlord who contracts to make repairs to premises assumes duty to use ordinary care in keeping premises in safe and habitable condition, and when landlord fails or refuses to make promised repairs there is violation of duty to use ordinary care, and if that violation is cause of personal injury or property damage, injured party can assert negligence cause of action.

4. Landlord and Tenant — 164(3)

Landlord who had undertaken to make repairs on leased premises had assumed common-law duty to use ordinary care in making such repairs, which was independent of any duty assumed in lease contract.

5. Insurance — 435.35

Trial court erred by holding that landlords' covenant to be responsible for major repairs did not create common-law duty actionable in tort, and that there was no coverage under tenants' general comprehensive liability policy as landlords' failure or refusal to repair allegedly defective milking system was simply breach of contractual duties excluded by policy.

On behalf of the defendants-third party plaintiffs-appellants, the cause was submitted on the briefs of Scott Lawrence of Lawrence & Charella, S.C. of St. Nazianz.

On behalf of the third party defendant-respondent, the cause was submitted on the briefs of Donald H. Carlson and John T.

Hillard JACOBS and Beverly Jacobs, Plaintiffs,

v.

Gary KARLS and Mary Karls, Defendants—Third Party Plaintiffs—Appellants,

v.

CALUMET EQUITY MUTUAL INSURANCE COMPANY, Third Party Defendant—Respondent.

No. 92-3052.

Court of Appeals of Wisconsin.

Submitted on Briefs April 22, 1993.

Opinion Released July 7, 1993.

Opinion Filed July 7, 1993.

Landlords commenced replevin action upon conclusion of lease term. Tenants counterclaimed that landlords were negligent in failing to perform duties of repair and maintenance under lease, and brought third-party complaint against comprehensive general liability insurer, claiming coverage for landlords' alleged negligence in failing to fulfill those obligations. The Circuit Court, Calumet County, Donald A. Poppy, J., granted insurer's motion for summary judgment. Appeal was taken. The Court of Appeals, Anderson, J., held that trial court erred by holding that landlords' lease covenant to be responsible for major repairs did not create common-law duty actionable in tort, and that there was consequently no coverage under policy.

Reversed.

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Private Railroad Crossings (DOT)

[LFB Summary: Page 557, #2]

CURRENT LAW

Current statutory language states that railroad companies are required to construct and maintain "farm" railroad crossings for use by the occupants of the adjacent land.

GOVERNOR

Replace the word "farm" with "private."

*amendment - retroactive to Jan 1992
didn't get in*

DISCUSSION POINTS

1. A 1908 Wisconsin Supreme Court decision held that the right to a "farm crossing" under this section of the statutes is not limited to adjoining lands used solely for agricultural purposes, but extends to such crossings that are necessary to enable owners of adjoining land to reach and work their properties. The court found that the word "farm" was descriptive of the crossing and not of the adjoining lands.

2. Based on this case, the current statutory language is not limited to adjoining property used only for agricultural purposes, but applies to any privately-owned property. In practice, there are two types of railroad crossings: public crossings that intersect public roadways and private crossings that intersect a road that is not open for public use.

3. DOA has indicated that this change is included in order to clarify the meaning of the statute.

4. A concern was expressed at public hearings that a change in the current statute could be interpreted by a court as a legislative attempt to change the definition.

5. Under the proposal to repeal the Office of the Commissioner of Transportation, there is a provision that would require a study to identify statutes relating to transportation regulation that are obsolete, antiquated or preempted by federal law. DOT is directed to report to the Governor and the Legislature the findings, conclusions and recommendations resulting from this study, including recommended statutory changes, by July 1, 1994.

6. If there is concern that the implications of this change should be studied in more detail, the proposed change could be deleted and the issue of "private" crossings could be included in this study.

ALTERNATIVES

1. Approve the Governor's recommendation to modify statutory language so that railroad companies are required to construct and maintain "private" railroad crossings for use by the occupants of the adjacent land.

2. Delete the Governor's recommendation, but direct DOT to address the issue of "farm" versus "private" crossings in the study of transportation regulation statutes and to include its findings, conclusions and recommendations in the report to the Governor and the Legislature.

3. Delete the Governor's recommendation.

Prepared by: Kelsie Doty

03/09/93 16:38



WIS. LEGISLATURE

001

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WISCONSIN LEGISLATURE

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Message:

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

Date: November 19, 1991 File Ref:

To: Charles A. Campbell, Director Railroad Bureau

From: Douglas S. Wood, Hearing Examiner
DW

Subject: Private Railroad Crossings

In §192.33(1), Wis. Stats., the legislature requires that "every corporation operating any railroad shall erect and maintain . . . suitable and convenient farm crossings for the use of the occupants of the lands adjoining . . .". The Wisconsin Supreme Court has interpreted this statute to not be limited solely to "farm" crossings, but to include any private crossing so long as it is "suitable and convenient". See Weiss v. Chicago North Shore and Milwaukee Railroad, 9 Wis.2d 581, 588 (1960) and Manitowoc Clay Product Co. v. Manitowoc, Green Bay and Northwestern Railway Co., 135 Wis.94, 105 (1908).

In the Manitowoc case, the Court noted that the Wisconsin statute was originally adapted from a New York statute which the courts of New York had interpreted to also not be limited solely for the use of the crossing in connection with farmlands or agriculture. The Court also importantly noted that railroad companies have the power to condemn and take private property for the purpose of constructing a railroad. Manitowoc, 135 Wis. at 104. See also §190.02(3), Wis. Stats., and §32.02(3), Wis. Stats. The Court noted that it would "cause great loss and hardship to the owners of valuable property" to allow the railroad to condemn their property but not provide for a crossing over the railroad tracks from one part of the property to another part. Id. In addition, the Court indicated that the statute should be "liberally construed to effectuate the purpose of its enactment." 135 Wis. at 101. In Weiss, the character of the use of the private crossing had changed from one used by about ten farm vehicles solely for agricultural purposes per day to use by large trucks for a commercial dump, which the Court found greatly increased the danger of accidents. Also, the railroad operated about 16 passenger trains per day on the line of track in question in Weiss.

November 19, 1991

The Court concluded that since the then Public Service Commission (now Office of the Commissioner of Transportation) only has jurisdiction over public crossings (i.e. crossings of public highways with railroad tracks), that the PSC had no jurisdiction over a farm crossing. Weiss, 9 Wis.2d at 590. The Court concluded that since the PSC had no jurisdiction, it would be within the jurisdiction of a court "to determine whether or not the use of such a crossing . . . is in the interest of public safety." Id

The Weiss Court noted that "a farm crossing is the simplest, or 'lowest' form of railroad crossing. It is private in character . . . and its purpose is only to accommodate the occupants of such lands." Weiss, 9 Wis.2d at 590. As noted in the Manitowoc case, the only statutory limitation upon the establishment and maintenance of a farm crossing is that it must be "suitable and convenient" for the use of the adjoining landowner. The Court concluded that the legislature, in requiring that railroads allow such farm crossings as are suitable and convenient, did not intend to allow any such farm crossings which would make regulation "necessary in the interest of public safety" Id. The Court, thus, reasoned that when the use of a farm crossing would create a danger to public safety that the use is necessarily not suitable and convenient and the crossing could be completely denied. In this case, public safety was particularly implicated, in my view, because of the use of the railroad tracks by 16 passenger trains each day and the increased number and size of highway vehicles.

In summary, it appears that under the law of Wisconsin, three types of crossings exist. First, the crossing of a public highway and a railroad track constitutes a public crossing over which the OCT has jurisdiction. Second, a private or farm crossing, the use of which is suitable and convenient in terms of public safety, must be constructed and maintained by the railroad for the benefit of the adjoining landowner. Third, a class of potential crossings between a private road or driveway and the railroad tracks, but where the use is such that public safety would be implicated by the establishment of the crossing.

For example, as in the Weiss case, where public safety was implicated because of the use of the crossing by large commercial dump trucks and relatively high number of passenger trains, the Court found an unacceptable danger to public safety.

November 19, 1991

Precisely where the line lies between a farm crossing which is suitable and convenient and one which is not suitable and convenient is a question to be determined based upon the total factual circumstances in any given case. Of particular relevance to that determination would be the number of trains and their speed, the type of trains (i.e. passenger or freight), the number and type of highway vehicles, the speed of those highway vehicles, presence of permanent obstructions to view. Other factors, such as the grade of the roadway, the angle of intersections and non-permanent obstructions to view would also be relevant, however, because these things could be changed in the design and construction of the crossing, they probably would be of less relevance than the other factors suggested.

With regard to the assignment of cost of the construction and maintenance of private crossings, I found no case law on this topic. The statute, however, appears to treat the construction and maintenance of private farm crossings in the same manner as the construction and maintenance of railroad right-of-way fences, that is to say that the railroad bears the obligation to pay for the construction and maintenance of private crossings. Whether the railroad could require some fee to cross the right-of-way would be open to question.

DSW:me

Fiscal Change to Current Law

FY 94 FY 95

TRANSPORTATION

1. **MILWAUKEE EAST-WEST TRANSPORTATION CORRIDOR PROJECT FUNDING**

<p>Provide \$5,000,000 SEG in FY94 from the unappropriated balance of the transportation fund to match federal funding that will be used to conduct a preliminary engineering study of the Milwaukee East-West Transportation Corridor project. Place \$3.8 million of that amount in unallotted reserve pending receipt of expected federal transportation funds for preliminary engineering. The department has existing federal dollars sufficient to match \$1.2 million for this purpose.</p>	\$5,000,000	\$0	SEG
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2. **AMTRAK PRELIMINARY ENGINEERING**

<p>Provide \$600,000 SEG in FY94 to finance preliminary engineering of Amtrak service extensions to Green Bay and Madison.</p>	\$600,000	\$0	SEG
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3. **FLOOD DAMAGE AIDS**

<p>Modify the flood damage aid program to provide a streamlined award process and to fully fund local government requests. The flood damage aid program provides funding to repair and improve flood damaged roads and bridges not covered under federal aid programs.</p>	\$130,000	\$0	SEG
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4. **LOCAL ROADS IMPROVEMENT PROGRAM - UNFUNDED PROJECTS**

<p>Allow county selection committees or designees to allocate funds from the 1993-1995 entitlements to support projects that were unfunded in the 1991-1993 biennium. Sunset this provision on June 30, 1995.</p>	\$0	\$0	
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5. **FREIGHT RAIL MODIFICATIONS**

<p>Applicant Requirement: Eliminate the requirement that a bond-financed project have a local government or rail commission as an applicant.</p>	\$0	\$0	
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Frazier & Sons Log & Lumber, Inc.
Rt. 2, Box 128
Muscoda, WI 53573

November 23, 1992

Governor Tommy Thompson
Madison, WI 53703

Dear Governor:

On the 26th of January 1988, the Wisconsin River Rail Transit Commission issued Frazier Brothers of Muscoda a railroad crossing permit. One hundred dollars was paid the 18th of December, 1987.

The rehabilitation project this past summer from Mazomanie to Boscobel included our private crossing at Milepost 197.40. I was told to pay \$1303.48 by the end of September or the crossing would be removed. It was to be paid three to four business days before the scheduled rehabilitation date. Our crossing is the access to four solar kilns and a pole shed. This facility is used for drying and storing lumber and is located on 4.2 acres.

I contended, as well as others in like circumstances, that the cost was extreme and desired to place the crossing in myself as I did the first time. Please keep in mind that as few as ten private crossings were not grandfathered in as 200 others were. As I didn't pay by Tuesday, September 29, 1992; on Thursday, October 1, 1992, a Wisconsin Department of Transportation employee posted a "No Trespassing" sign and ordered trenches dug on both sides. I received certified mail on October 15, 1992 stating a breach of Item Four of the crossing permit. Item Four states that "Permitter or its Agent shall, at Permittee's sole cost and expense, maintain, repair, and renew said crossing. This may include the cost of rebuilding the crossing if and when the line is rehabilitated." In the interpretation of Item Four, it doesn't state it shall be done by contractors exclusively. It doesn't take a professional to spike 2 mud rails and place gravel in place. I did this in original construction. This is an example of bureaucratic activities causing undue hardship on taxpayers of Wisconsin. It's hard to understand how 4 of us in one mile of track have been ordered to pay or lose crossings.

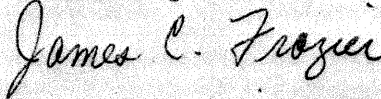
Furthermore, on November 6th, 1992, the Rail Commission voted

unanimously to have these crossing paid for or grandfathered in. The cost, approximately \$26,000, would be insignificant compared to the multi-million dollar project. Also, nothing guarantees it won't be done again in a few years, causing more unaffordable burden on crossing owners. Owners of private crossings as numbered Milepost 191.29, 197.31, 197.38 (Frazier) 197.43, and 197.58 share the same sentiments. Muscoda township has attended the Rail Transit Commission meeting October 23, 1992 and have expresses their disapproval of the whole hardship put on their township people as well as no fire protection for my property.

In conclusion, Frazier & Sons is a small business, employees 7 people and would appreciate help with this problem. I personally believe these few crossings should be grandfathered in and help some who can't afford the crossings. It would be good to see the State of Wisconsin resolve this issue and not leave a bad taste or deep resentment with the taxpayers.

Thanks for your consideration.

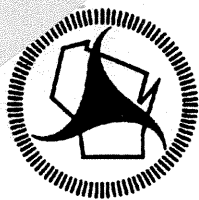
Sincerely Yours,

A handwritten signature in cursive script that reads "James C. Frazier".

James C. Frazier

CC: Governor Tommy Thompson
David Brandemuehl

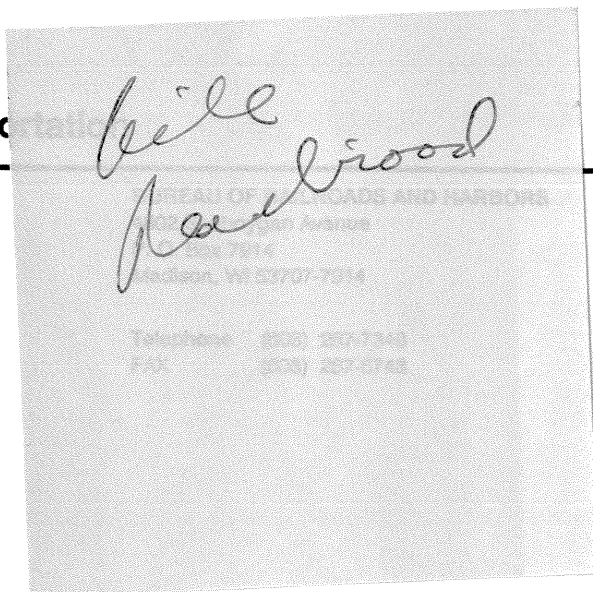
Under a statute requiring railroad right of way, defendant railroad was part of its "road," and no required between it and main track Chicago, M. & St. P. Ry. Co. (188, 165 Wis. 610).



Wisconsin Department of Transportation

April 30, 1993

Mr. Timothy Fast
LRB
100 N. Hamilton
Madison, WI 53703



Dear Mr. Fast:

Enclosed on Attachment 1 is data you asked for regarding the private railroad crossings in Avoca and Muscoda. The list shows 5 parties who the Wisconsin River Rail Transit Commission (WRRTC) had correspondence with. All parties except for Fraizer paid for their crossing.

Attached, per your request, you will find some correspondence regarding the Fraizer crossing. While the amount of money is small, I find it difficult to compensate any party who has trespassed across DOT property and constructed a grade crossing without proper approval. The WRRTC and our office agreed to let these encroachments remain as long as each party executed a Private Road Crossing Permit and compensated the WRRTC for actual costs. My enclosed letter of November 6, 1992 explains our actions in more detail.

The Fraizer crossing was covered by a Permit dated January 26, 1988 (copy attached). Fraizer refused to comply with his permit and as a result his crossing was removed.

If legislation is passed requiring installation of the Fraizer crossing, and reimbursing the 4 other parties, several issues may arise, that could put a financial burden on the WRRTC and the operating railroad.

1. Other parties who have executed Private Road Crossing Permits may be asking for reimbursement.
2. Future parties may also want to have new crossings installed at no cost to them.
3. The operating railroad, Wisconsin & Southern Railroad (WSOR) has had a policy since 1980 of assessing the users of private grade crossings, for construction, maintenance, and repairs of these crossings.

The proposed legislation may require the WSOR to pay for a portion of the reimbursement.

Mr. Timothy Fast

Page 2

April 30, 1993

4. These 5 parties may feel that all future maintenance of the crossings will be paid for by others.
5. The cost of installing the Fraizer crossing may be as much as \$700 more than the proposed original cost of \$1,303.48. No contractor is working in the area, and mobilization cost will be higher.

If I can answer any questions regarding the enclosed please call me at (608) 267-7349.

Sincerely,

Thomas R Wildenborg

Thomas R. Wildenborg, Chief
Rail Engineering & Safety Section

TRW:ks:29742/k

Enclosure

cc: John Evans
Frank Huntington
Ben Meighan
Roger Frey

Richard Scullion
Jim Malloy
Ted Schnepf
Paul Heitmann

Attachment 1

Fraizer Brothers Log & Lumber
Box 134
Muscodas, WI 53573

Mile Post 197.40

\$1,303.48

Leonard Headings
Route 2
Muscodas, WI 53573

Mile Post 197.43

\$1,303.48

John Pine
Route 2
Muscodas, WI 53573

Mile Post 197.58

\$1,303.48

Gregory Cliff
C & W Sawmill
Route 1, Box 19
Blue River, WI 53518

Mile Post 197.31

\$1,303.48

Donald Kessenich
Avoca, WI 53506

Mile Post 191.29

\$1,596.90

TRW:ks:29742/k

Attachment 1

A Song
Fraizer Brothers Log & Lumber
Box 134
Muscodas, WI 53573

Mile Post 197.40

\$1,303.48

Leonard Headings
Route 2
Muscodas, WI 53573

Mile Post 197.43

\$1,303.48

John Pine
Route 2
Muscodas, WI 53573

Mile Post 197.58

\$1,303.48

Gregory Cliff
C & W Sawmill
Route 1, Box 19
Blue River, WI 53518

Mile Post 197.31

\$1,303.48

Donald Kessenich
Avoca, WI 53506

Mile Post 191.29

\$1,596.90

TRW:ks:29742/k

Attachment 1

Fraizer Brothers Log & Lumber
Box 134

Muscoda, WI 53573 *No*

Mile Post 197.40

\$1,303.48

O Leonard Headings

Route 2

Muscoda, WI 53573

Mile Post 197.43

\$1,303.48

O John Pine

Route 2

Muscoda, WI 53573

Mile Post 197.58

\$1,303.48

Gregory Cliff

C & W Sawmill *537 2999*

Route 1, Box 19

Blue River, WI 53518

Mile Post 197.31

\$1,303.48

O Donald Kessenich

Avoca, WI 53506 *532-6519*

Mile Post 191.29

\$1,596.90

TRW:ks:29742/k

(5) The office may amend the rules at any time upon its own motion after due notice to interested parties.

(6) The office may, in enforcing the rules, inspect any motor vehicle used to transport workers to and from their places of employment or during the course of their employment. Upon request of the office, the department shall direct its traffic officers to assist the office in those inspections.

(7) Whenever the office finds that a motor vehicle used to transport workers to and from their places of employment or during the course of their employment violates any provision of the rules, the office shall make, enter and serve upon the owner of the motor vehicle such order as may be necessary to protect the safety of workers transported in the motor vehicle.

(8) Any railroad company wilfully failing to comply with an order issued under sub. (7), may be fined not to exceed \$500.

Historical and Statutory Notes

Source:

L.1969, c. 343, eff. Feb. 1, 1970.

L.1977, c. 29, § 1299, 1654(7), (7)(e),
§ 1654(9)(e), eff. July 1, 1977.

L.1981, c. 347, § 80(1), eff. July 1, 1983.

192.33. Fences, cattle guards, crossings

(1) Every corporation operating any railroad shall erect and maintain on both sides of its road (depot grounds excepted) sufficient fences with openings or gates or bars therein, and suitable and convenient farm crossings for the use of the occupants of the lands adjoining and shall maintain cattle guards at all highway crossings (outside of municipalities) and connect their fences therewith. This section shall not apply to that part of the road where sidetracks or switch tracks are used in cities of the first class.

(2) All roads shall be so fenced and such cattle guards be made within one month from the time of commencing to operate the same, so far as operated. Until such fences and cattle guards shall be made, every railroad corporation owning or operating any such road shall be liable for all damages done to domestic animals, or persons thereon, occasioned in any manner, in whole or in part, by the want of such fences or cattle guards; but after such fences and cattle guards shall have been constructed such liability shall not extend to damages occasioned in part by contributory negligence, nor to defects existing without negligence on the part of the corporation or its agents.

(3) The sufficiency of fences shall be determined according to ch. 90; but nothing herein shall render any fence insufficient which was a legal or sufficient fence when built.

(4) No fence shall be required in places where ponds, lakes, watercourses, ditches, hills, embankments or other sufficient protection renders a fence unnecessary to prevent domestic animals from straying upon the right of way.

(5) The maintenance of cattle guards may be omitted by the railroad company with the written consent of the office specifying the particular crossings.

5. PRIVATE RAILROAD CROSSINGS

Direct DOT to make payments from the freight rail infrastructure improvement loan appropriation in 1993-94 under the following circumstances: (a) to fund the rebuilding of any private road crossing across the tracks of a rail transit commission if the tracks were rehabilitated during 1992-93, the crossing has not been rebuilt since the tracks were rehabilitated and the private road crossing user obtains a private road crossing permit; or (b) to reimburse any private road crossing user for costs incurred by the user during 1992-93 for the rebuilding of a private crossing across the tracks of a rail transit commission if the tracks were rehabilitated during 1992-93 and the private user has obtained a private road crossing permit. Specify that permits must require the rail transit commission to maintain, repair and renew the crossing at the user's sole expense. This provision would not apply after June 30, 1994.

6. MASS TRANSIT OPERATING ASSISTANCE

Specify that an urban mass transit system may not provide service outside the boundaries of the entity that operates the system unless the system receives financial support for such service through a contract with a public or private entity for the provision of the service. This provision would not apply to a system providing such service on the bill's effective date if the system elects to continue to provide the service.

7. GREAT RIVER ROAD

Specify that any state or county trunk highway may be designated by DOT as an alternate route of the Great River Road.

8. CORRIDOR PRESERVATION STUDY

Direct DOT to conduct a corridor preservation study on Corridor 2020 multilane connection routes that are located in the northeast portion of the state, are less than 20 miles in length and are between an enumerated major highway development project and any existing highway having two or more lanes in each direction. Specify that DOT must report its findings to the appropriate standing committees of the Legislature and to the Governor by July 1, 1994.

9. COMMUNITY INFORMATIONAL LIGHTED SIGNS

Direct DOT to study and develop a plan for the design, location, installation and maintenance of community informational lighted signs upon and along the rights-of-way of interstate highways. Specify that DOT must submit the plan to the Governor and the appropriate standing committees of the Legislature by May 1, 1994.

1993 Session

LRB or Bill No./Adm. Rule No.

LRB4887/3

FISCAL ESTIMATE ☐ CORRECTED
DOA-2048 (R10/92)☐ ORIGINAL ☐ UPDATED
☐ SUPPLEMENTAL Amendment No. if Applicable

Subject

Rebuilding Private Railroad Crossings

Fiscal Effect

State: ☐ No State Fiscal EffectCheck columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation☐ Increase Costs - May be possible to Absorb
Within Agency's Budget ☐ Yes ☐ No☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation☐ Decrease CostsLocal: ☐ No local government costs1. ☐ Increase Costs
☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities
☐ Counties ☐ Others Rail Commissions
☐ School Districts ☐ VTAE Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

395(20)(bu)

Assumptions Used in Arriving at Fiscal Estimate

The owners of private crossings of state-owned railroad tracks which were rebuilt during the rehabilitation of the railroad line during the 1992-1993 fiscal year would be reimbursed by the rehabilitation project for costs incurred.

The cost of rebuilding private crossings of state-owned railroad tracks during rehabilitation projects in the 1993-1994 fiscal year would be considered costs of the rehabilitation project.

All owners of affected private crossings would sign crossing agreements.

As costs of the rehabilitation project, costs could be shared by the state and local units of government.

The cost of rebuilding private crossings during the 1992-1993 fiscal year was \$14,527.34. This does not include the cost of one crossing rebuilt and subsequently removed when the owner refused to sign a crossing agreement.

There are not any private crossings scheduled to be rebuilt during the 1993-1994 fiscal year.

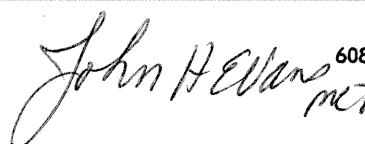
Long-Range Fiscal Implications

Additional funding could be required to prevent proration of payments if mileage is added in the future.

Agency/Prepared by: (Name & Phone No.)

Ron Adams, 608-267-9284
Department of Transportation

Authorized Signature/Telephone No.

 608-266-3048
met

Date

11/19/93

FISCAL ESTIMATE WORKSHEETDetailed Estimate of Annual Fiscal Effect
DOA-2047(R10/92)**1993 SESSION**

Subject

☐ ORIGINAL
☐ CORRECTED☐ UPDATED
☐ SUPPLEMENTALLRB or Bill No/Adm.Rule No.
LRB 4887/3

Amendment No.

Rebuilding Private Railroad Crossings

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):**II. Annualized Costs:****Annualized Fiscal Impact on State funds from:****Increased Costs****Decreased Costs****A. State Costs by Category**

State Operations-Salaries and Fringes	\$0	\$ -0
(FTE Position Changes)	(FTE)	(- FTE)
State Operations-Other Costs		-
Local Assistance	\$11,622	-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	\$11,622	\$ -0

B. State Costs by Source of Funds**Increased Costs****Decreased Costs**

GPR	\$	\$ -
FED	\$	\$ -
PRO/PRS	\$	\$ -
SEG/SEG-S	\$	\$ -

III. State Revenues-

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)

Increased Rev.**Decreased Rev.**

GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$0	\$ -0

NET ANNUALIZED FISCAL IMPACTSTATELOCAL

NET CHANGE IN COSTS

\$11,622

\$2,905

NET CHANGE IN REVENUES

\$0

\$0

Agency/Prepared by: (Name & Phone No.)
Department of Transportation
Ron Adams, 608-267-9284Authorized Signature/Telephone No.
608-266-3048Date
11/19/93

WisDOT's INTERCITY PASSENGER RAIL INITIATIVES

WisDOT recognizes that certain intercity passenger rail services can provide an efficient, attractive modal alternative as part of a statewide multimodal transportation system. Through **Translinks 21**, the state's transportation plan for the 21st century, WisDOT is analyzing a number of passenger rail options in the context of a statewide, multimodal transportation system:

- WisDOT will analyze conventional rail service expansions and enhancements, including the Green Bay and Madison extensions, and service to central and western Wisconsin.
- Results of other ongoing rail planning efforts (e.g., the Chicago-Milwaukee high speed rail study) will also be incorporated into **Translinks 21**.
- Development of an integrated rail/bus/air intermodal system will also be analyzed.

As precursors to the rail analyses of **Translinks 21**, WisDOT has undertaken a number of specific initiatives to promote and develop intercity passenger rail service in Wisconsin over the past five years. They include the following:

- In November of 1989, the state began financial support for expansion of Amtrak service between Milwaukee and Chicago. By 1993, the trains serving the corridor had doubled, and the number of passengers carried also doubled.
- In May of 1991, the Tri-State Study was completed, which outlined high speed rail options for the Chicago-Milwaukee-Twin Cities corridor. The study concluded that a southern corridor is preferred, similar to Amtrak's current *Empire Builder* route. The study results also generally favored a 125 MPH maximum speed.
- As an outgrowth of the Tri-State Study, Wisconsin and Illinois are co-sponsoring a more detailed feasibility study of high speed rail options between Chicago and Milwaukee. Phase I of the Chicago-Milwaukee Rail Corridor Study identified the current Amtrak corridor and diesel-electric locomotives as the initial service choices. Phase II will provide a detailed analysis of these options, with results due in 1994.
- Also in 1992, Wisconsin applied for and received federal recognition of the Chicago-Milwaukee corridor as a **high speed rail corridor under Section 1010 of ISTEA**. As part of a Midwest system including Chicago-Detroit and Chicago-St. Louis, the corridor is eligible to eliminate grade-crossing hazards.
- In January of 1993, WisDOT released its Report to the Governor in which it recommended **extension of conventional Amtrak service** from Milwaukee to Green Bay and Madison. The Governor approved a \$50 million bond authorization to fund Wisconsin's share of the start-up costs, contingent upon the provision of federal financial assistance for federal start-up and operating cost shares.



Wisconsin Department of Transportation

May 27, 1993

JUN 01 1993

DIVISION OF TRANSPORTATION
ASSISTANCE
P.O. Box 7914
Madison, WI 53707-7914
(608) 266-3351

Representative David Brandenmuehl
49th Assembly District
State Capitol, Room 317 North
P. O. Box 8952
Madison, WI 53708

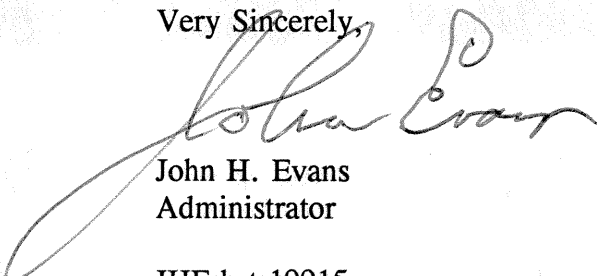
Dear Representative Brandenmuehl:

I think we had a good meeting earlier this week. Your letter raised a valid point and, as I told you earlier, Secretary Thompson wanted me to meet with you personally. Both Chuck and I value our relationship with your office and with you personally.

Once again I'd like to extend my sincere regrets over the actions of my staff member. I have gone over the proper protocol with that individual.

Please feel free to contact me should the need arise.

Very Sincerely,


John H. Evans
Administrator

JHE:brt:19915w